

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WINFRED LAMAR THOMAS,)	
)	
Movant,)	
)	
v.)	No. 4:16-CV-969 JAR
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on Movant Winfred Lamar Thomas’s Amended Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255, based on Johnson v. United States, 135 S. Ct. 2551 (2015). (Doc. No. 21). On April 9, 2018, the Court ordered the Government to show cause why the motion should not be granted in light of the Eighth Circuit’s recent decision in United States v. Naylor, No. 16-2047 (8th Cir. Apr. 5, 2018), holding that “convictions for second-degree burglary under Mo. Rev. Stat. § 569.170 (1979) do not qualify as violent felonies under the [Armed Career Criminal Act].” Id., slip op. at 15; (Doc. 29). In response, the Government concedes that Petitioner is no longer an armed career criminal under the Armed Career Criminal Act, 18 U.S.C. § 924(e) and requests the Court direct the U.S. Probation Office to issue a new presentence investigation report consistent with Naylor and thereafter resentence Movant. (Doc. No. 30.)

Accordingly,

IT IS HEREBY ORDERED that Movant’s Amended Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 [21] is **GRANTED**.

IT IS FURTHER ORDERED that the judgment and commitment in United States v. Winfred Thomas, No. 4:03-CR-00479-JAR is **VACATED** subject to resentencing.


IT IS FURTHER ORDERED that the United States Probation Office shall, as promptly as possible, prepare and file in Movant's criminal case a new resentencing report. Movant is granted a new sentencing hearing, to be set as soon as the new resentencing report is completed. Movant shall remain in custody pending resentencing.

IT IS FURTHER ORDERED that the Clerk of Court shall provide a copy of this Memorandum and Order to the United States Probation Office.

IT IS FURTHER ORDERED that the Clerk of Court is directed to docket a copy of this Memorandum and Order in the criminal case, No. 4:03-CR-00479-JAR.

A separate Judgment will accompany this Memorandum and Order.

Dated this 9th day of April, 2018.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE